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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re. . .

**JOHN MICHIAL SHUMATE and  
JENNIFER D. SHUMATE,**

Debtors.

No. **09-05078-FLK11**  
Chapter **11**

In re. . .

**SHUMATE, INC.,**

Debtor.

No. **09-05079-FLK11**  
Chapter **11**

In re. . .

**SHUMATE SPOKANE, LLC,**

Debtor.

No. **09-05081-FLK11**  
Chapter **11**

In re. . .

**SHUMATE TRI-CITY, LLC,**

Debtor.

No. **09-05080-FLK11**  
Chapter **11**

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**JOHN MICHIAL SHUMATE** and  
**JENNIFER D. SHUMATE**, husband and  
wife and the marital community  
composed thereof; **SHUMATE, INC.;**  
**SHUMATE TRI-CITY, LLC** d/b/a  
**SHUMATE HARLEY-DAVIDSON;**  
**SHUMATE SPOKANE, LLC** d/b/a  
**SHUMATE HARLEY-DAVIDSON,**

Plaintiffs,

vs.

**HARLEY-DAVIDSON MOTOR**  
**COMPANY, INC.; BUELL**  
**DISTRIBUTION COMPANY, LLC;** and  
**HARLEY-DAVIDSON CREDIT CORP.,**

Defendants.

Adversary Case No.

## COMPLAINT

John Michial Shumate (also known as J. Michial Shumate) and Jennifer D. Shumate (collectively, the “Shumates”), Shumate, Inc., Shumate Tri-City, LLC (“Shumate Tri-City”), and Shumate Spokane, LLC (“Shumate Spokane”) allege as follows:

### **I. JURISDICTION AND VENUE**

1.1. The allegations and relief requested herein arise under Title 11 of the United States Code (the “Bankruptcy Code”). This Court has jurisdiction with respect to these matters pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a), LR 83.5 of the Local Rules for the Bankruptcy Court for the Eastern District of Washington, and 28 U.S.C. § 157(b)(1). The causes of action set forth herein are

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1 core proceedings pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this  
 2 district pursuant to 28 U.S.C. § 1409.

## 3 **II. PARTIES**

4 2.1 The Shumates are husband and wife, residing in Pasco, Washington.

5 2.2 Shumate, Inc. is a corporation licensed under the laws of the State of  
 6 Washington, primarily doing business in Benton County, Washington at 3305  
 7 West 19th Avenue, Kennewick, Washington.

8 2.3 Shumate Tri-City (formerly Shumate Harley-Davidson, LLC) is a  
 9 limited liability company licensed under the laws of the State of Washington,  
 10 doing business in Benton County, Washington. The business of Shumate Tri-City  
 11 is conducted at 3305 West 19th Avenue, Kennewick, Washington.

12 2.4 Shumate Spokane is a limited liability company licensed under the  
 13 laws of the State of Washington, doing business in Spokane County, Washington.  
 14 Other than sales and service, the primary business of Shumate Spokane is  
 15 conducted at 3305 West 19th Avenue, Kennewick, Washington.

16 2.5 Harley-Davidson Motor Company, Inc. ("HDMC"), formerly known as  
 17 Eaglemark, Inc., is a corporation licensed under the laws of the State of  
 18 Wisconsin.

19 2.6 Buell Distribution Company, LLC d/b/a Buell Distribution Company  
 20 a/k/a Buell Motorcycle Company ("Buell") is a limited liability company licensed  
 21 under the laws of the State of Wisconsin.

22  
 23  
 24  
 25  
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2.7 Harley-Davidson Credit Corp. (“HDCC”) is a corporation licensed under the laws of the State of Nevada.

### III. FACTS

#### Facts: Shumate Tri-City, LLC

3.1 On or about July 13, 1999, Shumate Harley-Davidson, LLC entered into a Harley-Davidson Credit Corp. Customer Financing Agreement (the “Tri-City Financing Agreement”).

3.2 The Tri-City Financing Agreement, among other matters, provided for HDCC to finance Shumate Harley-Davidson, LLC for the ongoing purchase of goods and/or services from HDMC and Buell on the terms and conditions set forth therein. The Tri-City Financing Agreement has subsequently been extended and amended, and remains in full force and effect.

3.3 On or about July 13, 1999, the Shumates entered into a Continuing Guaranty Agreement that, among other matters, provided for the guaranty of all obligations of Shumate Harley-Davidson, LLC to HDCC.

3.4 On or about August 12, 1999, HDMC and Shumate Harley-Davidson, LLC entered into a Motorcycle Dealer Contract (the “Kennewick Harley-Davidson Dealer Contract”) whereunder Shumate Harley-Davidson, LLC was granted a dealership to be located in Kennewick, Washington for the sale of “Harley-Davidson Products” as defined therein. The Kennewick Harley-Davidson Dealer

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1 Contract has subsequently been extended and amended, and remains in full force  
2 and effect.

3 3.5 Upon execution of the Kennewick Harley-Davidson Dealer Contract,  
4 Shumate Harley-Davidson, LLC became a “new motorsports vehicle dealer” and  
5 “dealer” as defined by RCW 46.93.020(8).  
6

7 3.6 On or about June 5, 2002, Buell and Shumate Harley-Davidson, LLC  
8 entered into a Motorcycle Dealer Contract (the “Kennewick Buell Dealer  
9 Contract”) whereunder Shumate Harley Davidson, LLC was granted a Buell  
10 dealership to be located in Kennewick, Washington for the sale of “Buell  
11 Products” as defined therein. The Kennewick Buell Dealer Contract has  
12 subsequently been extended and amended, and remains in full force and effect.  
13

14 3.7 On or about December 8, 2003, Shumate Harley-Davidson, LLC  
15 amended its Certificate of Formation and changed its name to Shumate Tri-City,  
16 LLC.  
17

18 **Facts: Shumate Spokane, LLC**

19 3.8 On or about February 4, 2004, Shumate Spokane entered into a  
20 Harley-Davidson Credit Corp. Customer Financing Agreement (the “Spokane  
21 Financing Agreement”).  
22

23 3.9 The Spokane Financing Agreement, among other matters, provided  
24 for HDCC to finance Shumate Spokane for the ongoing purchase of goods and/or  
25 services from HDMC and Buell on the terms and conditions set forth therein.

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1           3.10 On or about February 1, 2004, Shumate Tri-City and the Shumates  
2 entered into a Continuing Guaranty Agreement that, among other matters,  
3 provided for the guaranty of all obligations of Shumate Spokane to HDCC.  
4

5           3.11 On or about February 4, 2004, Shumate, Inc. entered into a  
6 Collateralized Guaranty Agreement that, among other matters, provided for the  
7 guaranty of all obligations of Shumate Spokane to HDCC.  
8

9           3.12 On or about March 3, 2004, HDMC and Shumate Spokane entered  
10 into a Motorcycle Dealer Contract (the "Spokane Harley-Davidson Dealer  
11 Contract") whereunder Shumate Spokane, among other matters, was granted a  
12 dealership to be located in Spokane, Washington for the sale of "Harley-Davidson  
13 Products" as defined therein. The Spokane Harley-Davidson Dealer Contract has  
14 subsequently been extended and amended, and remains in full force and effect.  
15

16           3.13 Upon execution of the Spokane Harley-Davidson Dealer Contract,  
17 Shumate Spokane became a "new motorsports vehicle dealer" and "dealer" as  
18 defined by RCW 46.93.020(8).  
19

20           3.14 On or about March 3, 2004, Buell and Shumate Spokane entered  
21 into a Motorcycle Dealer Contract (the "Spokane Buell Dealer Contract")  
22 whereunder Shumate Spokane, among other matters, was granted a dealership to  
23 be located in Spokane, Washington for the sale of "Buell Products" as defined  
24  
25

1 therein. The Spokane Buell Dealer Contract has subsequently been extended and  
2 amended, and remains in full force and effect.

3 **Facts: J. Michial Shumate**

4  
5 3.15 J. Michial Shumate has been in the automobile and motorcycle  
6 business for over thirty years as the owner and operator of automobile and  
7 motorcycle dealerships.

8  
9 3.16 J. Michial Shumate is the "Dealer Operator" designated in the Tri-  
10 City Harley-Davidson Dealer Contract, the Spokane Harley-Davidson Dealer  
11 Contract, the Tri-City Buell Dealer Contract, and the Spokane Buell Dealer  
12 Contract (collectively, the "Dealer Contracts").

13  
14 3.17 As the Dealer Operator, J. Michial Shumate is recognized as a party  
15 with the personal qualifications, experience, skill, and commitment necessary for  
16 the Dealerships to perform their obligations under the Dealer Contracts.

17  
18 3.18 J. Michial Shumate has also been recognized by HDCC as a leader  
19 within their dealership community, and was appointed to the Harley-Davidson  
20 Financial Services Dealer Advisory Board from 2004 to 2006.

21 **Facts: Shumate, Inc.**

22 3.19 Shumate, Inc. provides management and administrative services to  
23 Shumate Spokane and Shumate Tri-City, and is the holder of all membership  
24 interests of Shumate Spokane and Shumate Tri-City.  
25

1           3.20 The combined operations of Shumate, Inc., Shumate Tri-City, and  
2 Shumate Spokane are known as “Shumate Harley-Davidson.”

3           3.21 Shumate Harley-Davidson grew as a highly successful and expanding  
4 dealership operation for the first several years of operation. Shumate Spokane  
5 opened a secondary Harley-Davidson retail location in Lewiston, Idaho.  
6

7                           **Facts: The Walla Walla Store**

8           3.22 Shumate Tri-City also commenced the process of gaining approval  
9 from HDMC for the establishment of a secondary Harley-Davidson retail store to  
10 be located in Walla Walla, Washington (the “Walla Walla Store”).  
11

12           3.23 Following months of due diligence, and working with designers  
13 required by HDMC, Shumate Tri-City executed a Lease for the premises located at  
14 61 East Main Street, Walla Walla, Washington (the “Walla Walla Lease”), with  
15 lease payments of \$3,600.00 per month, increasing five percent (5%) per year  
16 thereafter.  
17

18           3.24 After the execution of the Walla Walla Lease, Shumate Tri-City was  
19 notified by HDMC that a “moratorium” had been declared on the approval of  
20 further dealer locations, and that the Walla Walla Store would not be approved at  
21 that time.  
22

23           3.25 Shumate Tri-City, including the investment in the Walla Walla Lease,  
24 has lost approximately \$125,000.00 in the development of the Walla Walla Store.  
25



**Facts: The North Spokane Store**

3.26 In 2006, Shumate Spokane, to continue the growth of the Harley-Davidson dealership, commenced the process of gaining approval from HDMC for the establishment of a secondary Harley-Davidson retail store to be located in north Spokane, Washington (the "North Spokane Store").

3.27 Following months of due diligence, and with the knowledge and approval of HDMC for the North Spokane Store, Shumate Spokane executed an Assignment of Lease on February 27, 2008 for the premises located at 551 East Hawthorne, Spokane, Washington (the "Hawthorne Lease"), consisting of approximately 11,179 square feet of rented space.

3.28 Shumate Spokane paid the sum of \$65,000.00 to secure an Assignment of the Hawthorne Lease, and assumed lease payments of \$11,179.00 per month to be paid through September 30, 2010.

3.29 After the execution of the Hawthorne Lease, Shumate Spokane was notified by HDMC that a "moratorium" had been declared on the approval of further dealer locations, and that the North Spokane Store would not be approved at that time.

3.30 Shumate Spokane, including the investment in the Hawthorne Lease, has lost approximately \$400,000.00 in the development of the North Spokane Store.

1           3.31 Notwithstanding their representations of a moratorium on new  
2 dealership locations, HDMC subsequently approved a new Harley-Davidson  
3 dealership in Coeur d'Alene, Idaho, which operates in competition with Shumate  
4 Spokane.  
5

6                           **Facts: Harley-Davidson Operations**

7           3.32 Harley-Davidson, Inc. and its subsidiaries are the owners and  
8 operators of the Harley-Davidson motorcycle business, operating in two  
9 segments: the Motorcycles & Related Products (Motorcycles) segment and the  
10 Financial Services (Financial Services) segment.  
11

12           3.33 On information and belief, HDMC and Buell are subsidiaries of  
13 Harley-Davidson, Inc. that conduct business within the Motorcycles segment of  
14 Harley-Davidson, Inc., and are members of the group of companies doing  
15 business as Harley-Davidson Motor Company.  
16

17           3.34 On information and belief, HDCC is a subsidiary of Harley-Davidson,  
18 Inc. that conducts business within the Financial Services segment of Harley-  
19 Davidson, Inc., and is a member of the group of companies doing business as  
20 Harley-Davidson Financial Services ("HDFS"). HDFS provides wholesale and  
21 retail financing and, as an agent, provides insurance and insurance-related  
22 programs primarily to Harley-Davidson and Buell dealers and their retail  
23 customers.  
24  
25

1           3.35 The business operations of Harley-Davidson, Inc. and its subsidiaries  
2 have been negatively impacted by the current economic environment. Retail sales  
3 of Harley-Davidson motorcycles in 2008 were down 13.0% in the U.S. as  
4 compared to 2007. The declining sales have had a profound impact on the  
5 operations of Harley-Davidson and Buell dealerships, including Shumate Harley-  
6 Davidson.  
7

8           3.36 Shumate Harley-Davidson, commencing in mid-2008, took  
9 affirmative action to respond to the declining market, and to meet its obligations  
10 to HDMC under the Dealer Contracts, to HDCC under the Spokane Financing  
11 Agreement and the Tri-City Financing Agreement (the "Financing Agreements"),  
12 and to all other creditors. Those affirmative actions included efforts by the  
13 Shumates to refinance their substantial equity in the real property and  
14 improvements comprising the Tri-City facility, and efforts to secure a purchaser  
15 for the Spokane dealership. Those actions, if successful, would have, and still  
16 should, provide sufficient liquidity to meet all obligations under the Dealer  
17 Contracts, the Financing Agreements, and all other creditors.  
18  
19

20           3.37 In November of 2008, Shumate Harley-Davidson was advised that  
21 HDFS was available to help with the financial needs of the dealers, and could  
22 provide interim financing to dealers. At the suggestion of HDFS, Shumate, Inc.  
23 sought an interim loan of approximately \$750,000.00 to be repaid from the  
24  
25

1 refinance of the Tri-City facility, which was then pending with Wachovia. HDFS  
 2 never granted or denied that loan request.

3 3.38 Shumate Harley-Davidson suffered a decline in sales revenues that  
 4 continued to accelerate through late 2008. Over time, Shumate Harley-Davidson  
 5 gradually fell behind in its obligations under the Dealer Contracts and Financing  
 6 Agreements.  
 7

8 3.39 Retail sales of Harley-Davidson motorcycles have continued to decline  
 9 in 2009, with a corresponding negative effect on their dealer network, including  
 10 Shumate Harley-Davidson. As disclosed by the financial reports of Harley-  
 11 Davidson, Inc., retail sales of Harley-Davidson motorcycles decreased 26.1% in  
 12 the United States during the first half of 2009 compared to the first half of 2008.  
 13 U.S. retail sales of Harley-Davidson motorcycles in the second quarter of 2009  
 14 were down 35.1% as compared to the second quarter of 2008. On an industry-  
 15 wide basis, retail sales of heavyweight motorcycles in the United States declined  
 16 48.1% during the second quarter.  
 17  
 18

### 19 **Facts: The HDCC Holdbacks**

20 3.40 Shumate Harley-Davidson, as contemplated by the Financing  
 21 Agreements, routinely submitted retail financing agreements to HDCC (the “Retail  
 22 Financing Agreements”), as the preferred source of financing for the sale of goods  
 23  
 24  
 25

1 and services to retail customers, for funding under one or more financing  
2 programs offered by HDCC (the "Financing Programs").

3 3.41 The Retail Financing Agreements customarily included items that  
4 were payable to third parties, including Washington State Retail Sales Tax,  
5 Extended Service Plans, Gap and Debt Protection, and Washington State  
6 Department of Licensing fees (the "Third Party Payables").

7 3.42 The acceptance of a Retail Financing Agreement by HDCC created an  
8 account payable to Shumate Harley-Davidson. Upon the funding of a Retail  
9 Financing Agreement by HDCC, Shumate Harley-Davidson would remit payment  
10 of the Third Party Payables.

11 3.43 On December 26, 2008, despite representations that HDCC would  
12 provide financial assistance to its dealers, and despite the efforts of the Shumates  
13 and Shumate Harley-Davidson to refinance the Tri-City assets and sell the  
14 Spokane assets, HDFS commenced the withholding of all proceeds from Retail  
15 Financing Agreements. That practice has continued post-petition, resulting in  
16 the capture by HDCC of monies owed for Third Party Payables, and for dealer  
17 credits ("Dealer Credits") that were payable to Shumate Harley-Davidson by  
18 HDMC and Buell as a result of normal dealership activities, including dealer  
19 flooring activities, warranty work, and parts returns.  
20  
21  
22  
23  
24  
25

1           3.44 The retention of the Third Party Payables and Dealer Credits by  
2 HDCC wrongfully deprived Shumate Harley-Davidson of funds that were needed  
3 for normal operations, and accelerated the deteriorating financial condition of  
4 Shumate Harley-Davidson.  
5

6           3.45 HDCC, rather than support the efforts of Shumate Harley-Davidson  
7 to meet its obligations, instead transmitted a Notice of Default and Demand for  
8 Payment under Customer Financing Agreement on or about January 16, 2009 to  
9 Shumate Spokane, Shumate Tri-City, Shumate, Inc., and the Shumates.  
10

11           3.46 Subsequent Notices of Default and Demand for Payment under  
12 Customer Financing Agreement were transmitted to these same parties on or  
13 about July 2, 2009, July 29, 2009, and August 6, 2009, despite the continuing  
14 efforts of Shumate Harley-Davidson to meet its obligations through refinance and  
15 sale.  
16

17           3.47 On or about August 6, 2009, HDCC demanded that Shumate  
18 Spokane and Shumate Tri-City voluntarily return all collateral to HDCC.  
19

20           3.48 On August 11, 2009, HDCC commenced litigation in the Spokane  
21 County Superior Court, and obtained a Temporary Restraining Order (the "State  
22 Court TRO") with no notice to Shumate Spokane, Shumate Tri-City, Shumate,  
23 Inc., or the Shumates, all named as defendants, providing that "Defendants and  
24 their agents, servants, employees, attorneys, and all persons in active concert and  
25

1 participation with Defendants are enjoined from moving, selling, or otherwise  
2 disposing of the collateral” described therein.

3 3.49 On August 11, 2009, HDCC also obtained an Order To Show Cause  
4 Why A Writ Of Replevin Should Not Be Issued And Why A Preliminary Injunction  
5 Should Not Issue (the “State Court Show Cause Order”), with no notice to  
6 Shumate Spokane, Shumate Tri-City, Shumate, Inc., or the Shumates, requiring  
7 the Defendants to appear and “show cause why a Writ of Replevin and  
8 Preliminary Injunction should not be issued in accordance with said Motions and  
9 the prayer in Plaintiffs Complaint.” (*sic*).  
10

11 3.50 The final hearing on the State Court TRO and the State Court Show  
12 Cause Order were set for September 10, 2009 at 8:30 a.m.  
13

14 3.51 On August 26, 2009, HDMC transmitted a letter to Shumate Spokane  
15 (the “Spokane Termination Letter”), stating, in part, that “Harley-Davidson Motor  
16 Company, Inc. and its affiliate, Buell Distribution Corporation (collectively  
17 “Harley-Davidson”), intend to terminate their Dealer Contracts and franchises  
18 with Shumate Spokane, LLC, d/b/a Shumate Harley-Davidson (“Shumate  
19 Spokane”), effective 15 days from the date of your receipt of this letter.”  
20

21 3.52 On August 26, 2009, HDMC transmitted a letter to Shumate Tri-City,  
22 LLC (the “Tri-City Termination Letter”), stating, in part, that “Harley-Davidson  
23 Motor Company, Inc. and its affiliate, Buell Distribution Corporation (collectively  
24  
25

"Harley-Davidson"), intend to terminate their Dealer Contracts and franchises with Shumate Tri-City, LLC, d/b/a Shumate Harley-Davidson ("Shumate Tri-City"), effective 15 days from the date of your receipt of this letter."

#### IV. FIRST CAUSE OF ACTION.

##### **Violation of Motor Vehicle Statute – Motorsports Vehicles, including Violation of Consumer Protection Act**

4.1 The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate Spokane incorporate the allegations of paragraphs 1.1 through 3.52 as though fully set forth herein.

4.2 RCW 46.93.100(2), states, in relevant part:

All claims for warranty work for parts and labor made by dealers under this section must be paid by the manufacturer within thirty days after approval, and must be approved or denied within thirty days of receipt by the manufacturer.

4.3 The failure of HDCC, acting in concert with HDMC and Buell, to remit payment for warranty work performed by Shumate Spokane and Shumate Tri-City for parts and labor is a violation of RCW 46.93.100(2), resulting in damages of \$59,716.50, together with consequential damages to be proven at trial.

4.4 The failure of HDCC, acting in concert with HDMC and Buell, to remit payment for the Third Party Payables resulted in unpaid Washington State Retail Sales Tax by Spokane Shumate of \$45,782.00 and unpaid Washington State Retail Sales Tax by Spokane Tri-City of \$66,802.21, and has resulted in

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1 damages in those amounts, together with consequential damages to be proven at  
2 trial.

3 4.5 The failure of HDCC, acting in concert with HDMC and Buell, to  
4 remit payment for the Third Party Payables has resulted in unpaid credits to  
5 Shumate Tri-City of \$31,380.04, and credits to flooring of \$112,037.00, and has  
6 resulted in damages in those amounts, together with consequential damages to  
7 be proven at trial.  
8

9 4.6 The obligations of HDMC and Buell to Shumate Spokane and  
10 Shumate Tri-City under RCW 46.93 et seq. included an obligation to pay the  
11 dealer, at a minimum:  
12

13 (a) dealer cost, less all allowances paid or credited to the dealer  
14 by the manufacturer, of unused, undamaged, and unsold new  
15 motorsports vehicles in the dealer's inventory that were  
16 acquired from the manufacturer or another dealer of the same  
line make in the ordinary course of business;

17 (b) Dealer cost for all unused, undamaged, and unsold  
18 supplies, parts, and accessories in original packaging, except  
19 that in the case of sheet metal, a comparable substitute for  
20 original packaging may be used, if the supply, part, or  
21 accessory was acquired from the manufacturer or from another  
22 dealer ceasing operations as a part of the dealer's initial  
inventory, as long as the supplies, parts, and accessories  
appear in the manufacturer's current parts catalog, list, or  
current offering;

23 (c) Dealer cost for all unused, undamaged, and unsold  
24 inventory, whether vehicles, parts, or accessories, the purchase  
25 of which was required by the manufacturer;

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(d) The fair market value of each undamaged sign owned by the dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign; and

(e) The fair market value of all special tools owned or leased by the dealer that were acquired from the manufacturer or persons approved by the manufacturer, and that were required by the manufacturer, and are in good and usable condition, less reasonable wear and tear. However, if the tools are leased by the dealer, the manufacturer shall pay the dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement.

4.7 The Tri-City Termination Letter failed to advise Shumate Tri-City of the obligations of HDMC and Buell under RCW 46.93 et seq., or the rights of Shumate Tri-City thereunder.

4.8 The Spokane Termination Letter, as a purported cause for termination, recited "since August 11, 2009, Shumate Spokane has been enjoined by a Spokane County Superior Court order from selling any new Harley-Davidson motorcycles, parts, accessories, clothing and other merchandise. As a consequence, Shumate Spokane has not been conducting normal Harley-Davidson sales and service operations."

4.9 Shumate Spokane earned profits of \$83,378.00 in August of 2008. The inability of Shumate Spokane to conduct normal Harley-Davidson sales and service operations in August of 2009 was due to the State Court TRO that had

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1 been obtained by HDCC, acting in concert with HDMC and Buell, to prevent  
2 normal operations at Shumate Spokane.

3 4.10 The Shumate Tri-City Termination Letter, as a purported cause for  
4 termination, recited “since August 11, 2009, Shumate Tri-City has been enjoined  
5 by a Spokane County Superior Court order from selling any new Harley-Davidson  
6 motorcycles, parts, accessories, clothing and other merchandise. As a  
7 consequence, Shumate Tri-City has not been conducting normal Harley-Davidson  
8 sales and service operations.”  
9

10 4.11 Shumate Tri-City earned profits of \$101,370.00 in August of 2008.  
11 The inability of Shumate Tri-City to conduct normal Harley-Davidson sales and  
12 service operations in August of 2009 was due to the State Court TRO that had  
13 been obtained by HDCC, acting in concert with HDMC and Buell, to prevent  
14 normal operations at Shumate Tri-City.  
15

16 4.12 The Spokane Termination Letter failed to advise Shumate Spokane of  
17 the obligations of HDMC and Buell under RCW 46.93 et seq., or the rights of  
18 Shumate Spokane thereunder.  
19

20 4.13 The Spokane Termination Letter and the Tri-City Termination Letter,  
21 stating that they were “effective 15 days from the date of [your] receipt of this  
22 letter,” are deficient, as those letters do not state a date certain for the  
23 termination of the Dealer Contracts, as required by RCW 46.93.070.  
24  
25

1           4.14 The Spokane Termination Letter and the Tri-City Termination Letter,  
2 by their terms, would have become effective shortly after the final hearing on the  
3 State Court TRO and the State Court Show Cause Order which were set for  
4 September 10, 2009 at 8:30 a.m.  
5

6           4.15 If HDCC, acting in concert with HDMC and Buell, had prevailed at  
7 the State Court Show Cause Order hearing, the assets that are subject to the  
8 repurchase obligations of HDMC and Buell would have been recovered by HDCC  
9 prior to the effective date of termination of the Dealer Contracts, leaving no  
10 remaining assets in the possession of Shumate Spokane or Shumate Tri-City for  
11 HDMC and Buell to repurchase.  
12

13           4.16 HDCC, through its actions, and the actions taken in concert with  
14 HDMC and Buell, has breached its obligation of fair dealing in the trade under  
15 RCW 46.93.020(4).  
16

## 17                   **V. SECOND CAUSE OF ACTION.**

### 18                   **Violation of Consumer Protection Act**

19           5.1 The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate  
20 Spokane incorporate the allegations of paragraphs 1.1 through 4.16 as though  
21 fully set forth herein.  
22

23           5.2 RCW 46.93.170, states, in relevant part:

24                   (1) Notwithstanding the terms of a franchise agreement, a  
25 manufacturer, distributor, factory branch, or factory

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representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

...

(q) Unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

...

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW.

5.3 HDCC, through its actions set forth herein, and the actions taken in concert with HDMC and Buell, has unfairly prevented or attempted to prevent Shumate Spokane and Shumate Tri-City from receiving reasonable compensation for the value of their motorsports vehicles.

5.4 HDCC, through its actions set forth herein, and the actions taken in concert with HDMC and Buell, has affected the public interest, constituting an unlawful and unfair practice under the Consumer Protection Act at Chapter 19.86 RCW.

5.5 The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate Spokane, as a result of the violations of the Consumer Protection Act by HDCC,

1 acting in concert with HDMC and Buell, have sustained damages in amounts to  
2 be proven at the time of trial.

3 5.6 Pursuant to RCW 19.86.090, the Shumates, Shumate, Inc., Shumate  
4 Tri-City, and Shumate Spokane, in addition to actual damages, are entitled to  
5 recover the costs of this suit, including reasonable attorneys' fees.  
6

7 5.7 Pursuant to RCW 19.86.090, the Shumates, Shumate, Inc., Shumate  
8 Tri-City, and Shumate Spokane are entitled to judgment increasing the award of  
9 damages up to an amount not to exceed three times the actual damages  
10 sustained, not to exceed twenty-five thousand dollars.  
11

## 12 **VI. THIRD CAUSE OF ACTION**

### 13 **Breach of Obligation of Good Faith**

14 6.1 The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate  
15 Spokane incorporate the allegations of paragraphs 1.1 through 5.7 as though  
16 fully set forth herein.  
17

18 6.2 RCW 46.93.020(4) states:

19 (4) "Good faith" means honesty in fact and fair dealing in the  
20 trade as defined and interpreted in RCW 62A.2-103.

21 6.3 RCW 62A.2-103(1)(b) states:

22 (b) "Good faith" in the case of a merchant means honesty in  
23 fact and the observance of reasonable commercial standards of  
24 fair dealing in the trade.  
25

1           6.4    The transactions among the Shumates, Shumate, Inc., Shumate Tri-  
2 City, and Shumate Spokane and HDCC, acting in concert with HDMC and Buell,  
3 are subject to the provisions of RCW 62A.1-203, which states:

4                   Every contract or duty within this Title imposes an obligation of  
5 good faith in its performance or enforcement.

6           6.5    HDCC, HDMC, and Buell have breached their obligations of good  
7 faith.

8           6.6    The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate  
9 Spokane, as a result of the breach of obligations of good faith by HDCC, HDMC,  
10 and Buell, have suffered damages in an amount to be determined at the time of  
11 trial herein.  
12

## 13                   **VII. FOURTH CAUSE OF ACTION**

### 14                           **Conversion**

15           7.1    The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate  
16 Spokane incorporate the allegations of paragraphs 1.1 through 6.6 as though  
17 fully set forth herein.  
18

19           7.2    The retention of the Third Party Payables by HDCC, acting in concert  
20 with HDMC, was a wrongful exercise of dominion and control over the Third Party  
21 Payables, and denied the use of said funds for payment of the Third Parties  
22 entitled thereto.  
23  
24  
25

1           7.3 The Shumates, Shumate, Inc., Shumate Tri-City, and Shumate  
2           Spokane, as a result of the conversion of the Third Party Payables by HDCC and  
3           HDMC, have suffered damages in an amount to be determined at the time of trial  
4           herein.

6                                   **VIII. PRAYER FOR RELIEF**

7           WHEREFORE, the Shumates, Shumate, Inc., Shumate Tri-City, and  
8           Shumate Spokane pray for judgment against HDCC, HDMC, and Buell, jointly  
9           and severally, as follows:

11           A. For an award of judgment in an amount to be proven at time of trial.

12           B. For an award of judgment increasing the award of damages up to an  
13           amount not to exceed three times the actual damages sustained, not to exceed  
14           twenty-five thousand dollars.

16           C. For an award of attorneys' fees and costs in bringing this action.

17           D. For such other and further relief as this Court deems just and  
18           proper.

19           DATED this 9<sup>th</sup> day of October 2009.

21                                   DAVIDSON BACKMAN MEDEIROS PLLC

22                                   /s/ Barry W. Davidson

23                                   Barry W. Davidson, WSBA No. 07908  
24                                   John Michial Shumate and Jennifer D.  
25                                   Shumate, Interim Attorney for Shumate Tri-  
                                  City, LLC, and Interim Attorney for Shumate  
                                  Spokane, LLC

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1  
2 *and*

3 SOUTHWELL & O'ROURKE, P.S.

4 /s/ Dan O'Rourke  
5 Dan O'Rourke, WSBA No. 04911  
6 Attorney for Shumate, Inc.

7 *and*

8 PAUKERT & TROPPMANN PLLC

9 /s/ Michael J. Paukert  
10 Michael J. Paukert, WSBA No. 20237  
11 Attorney for Shumate Tri-City, LLC

12 *and*

13 EWING ANDERSON PAUL, P.S.

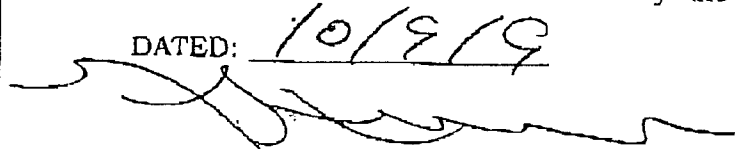
14 /s/ David E. Eash  
15 David E. Eash, WSBA No. 06684  
16 Attorney for Shumate Spokane, LLC

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VERIFICATIONS

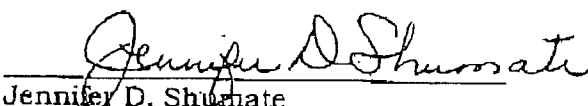
I, John Michial Shumate, hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: 10/9/09

  
\_\_\_\_\_  
John Michial Shumate

I, Jennifer D. Shumate, hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: 10/9/09

  
\_\_\_\_\_  
Jennifer D. Shumate